

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

AASYLEI LOGGERVALE; AASYLEI)	
HARDGE-LOGGERVALE; and AAOTTAE)	
LOGGERVALE,)	
)	
Plaintiffs,)	
)	
VS.)	NO. C 20-04679 WHA
)	
COUNTY OF ALAMEDA; STEVEN)	
HOLLAND; MONICA POPE; KEITH)	
LEEPER; ANTHONY DeSOUSA;)	
CAMERON GALLOWAY; and DOES 1)	
to 50, inclusive,)	
)	
Defendants.)	
)	

San Francisco, California
Wednesday, April 26, 2023

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

LAW OFFICE OF JOSEPH S. MAY
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San Francisco, California 94109
BY: JOSEPH S. MAY, ATTORNEY AT LAW

For Defendants:

ORBACH HUFF & HENDERSON LLP
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BY: KEVIN E. GILBERT, ATTORNEY AT LAW

REPORTED BY: Ana Dub, RDR, CRR, CSR No. 7445
Official United States Reporter

Wednesday - April 26, 2023

11:00 a.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil Action 20-4679, Loggervale, et al. vs. County of Alameda, et al.

Counsel, please approach the podium and state your appearances for the record, beginning with counsel for the plaintiff.

MR. MAY: Joseph May for the plaintiffs.

MR. GILBERT: Good morning. Kevin Gilbert for the defendants.

THE COURT: Good morning to you.

So how can I help this morning?

MR. MAY: After we filed the fee motion, we saw the opposition. It challenged each project that we put together with our fees. And I believe the Court's order, Docket 241, indicates that if the Defense is challenging the plaintiffs' fees as excessive, then they need to produce their own fee records for -- I think the Court's word was "symmetry."

THE COURT: That's true, yeah.

MR. MAY: Yeah. We requested those records, and the defendants are claiming that -- they've created ten different categories of objection, things like duplication of effort, administrative tasks that shouldn't have been billed at attorney rates, you know, et cetera, ten different categories;

1 and only one of them is called, quote, excessive time or
2 I think there's another term.

3 And so they're saying that the Court's order says they
4 only need to produce their records if they challenge our fee
5 as, quote, excessive. And they only used that challenge for a
6 few of the tasks. Mostly they refer to one of the other nine
7 categories that they made up.

8 It doesn't seem like a logical reading of the Court's
9 order; so we request the Court's help.

10 **THE COURT:** Well, all right. Let's hear from
11 Mr. Gilbert.

12 **MR. GILBERT:** Your Honor, the City -- or, excuse me --
13 the County opposed the fees motion on numerous grounds.

14 **THE COURT:** On what?

15 **MR. GILBERT:** Numerous grounds. And there's legal
16 grounds and then there's technical grounds.

17 Within the memorandum of points and authorities, we set
18 forth the specific objections; for example, the fact that there
19 were six defendants when the case started and 13 claims against
20 each and that there was limited success on many of the claims
21 and that there was waivers by plaintiffs on stipulations.

22 Those issues were addressed in the opposition; then were
23 carried through. We went through every line item that we could
24 respond to in plaintiffs' claimed fees and responded.

25 What we tried to do is to respond item by item. So, for

1 example, there were numerous entries where plaintiffs' counsel
2 sought compensation as a senior experienced attorney for tasks
3 such as e-filing, arranging for services of subpoena,
4 preparation of files for trial, which are clerical tasks which
5 should not be billed for. We objected and have a specific
6 objection to that for "Administrative work not billable."

7 We then went through and have other objections, that this
8 work, for example -- and I'm paraphrasing. I'm happy to
9 reference the specific language -- where we've said this work
10 would be completed by a low-level associate, not by a senior
11 attorney, so the rate should be different.

12 And we have a specific legend that we put on the table,
13 which was attached to my declaration in opposition to the fees
14 motion. Within that declaration, was letters A through J of
15 the specific categories.

16 When we served our objection to plaintiff, we clarified
17 and confirmed the only areas where we are specifically
18 objecting that the actual hours on a project were excessive
19 were where we objected under Category A. And those were
20 limited. Those were not very many.

21 Those -- for example, we objected to a lot of the work for
22 the public records request and for researching whether COVID
23 can delay a trial was excessive and improper. And we,
24 correspondingly, did not have any time for that.

25 We did object to time at trial as being excessive, and we

1 produced all of our time records for the period of
2 December 1st, 2022, through March 1st, 2023, for preparation
3 for and trial.

4 The only items that have been deleted off of that list was
5 my personal briefing to the County and my meetings with the
6 County in closed session. All other time, regardless of
7 whether it involved trial preparation during that time period,
8 has been provided.

9 We then went through and as the conversations continued,
10 we asked plaintiff: Tell us the projects where you think we
11 specifically objected based upon excessive billing.

12 And the Court's order does not specifically define
13 "excessive billing." It simply says that if a "party contends
14 that any item or project was excessive, then the opposition
15 must explain why and provide a declaration," and it continues
16 on.

17 So we had interpreted "excessive" in the Court's order as
18 referring to, if an attorney, for example, Mr. Peters, appears
19 at jury deliberations where the Court's minutes say it's a
20 four-hour hearing and he billed 16 hours, that would be
21 excessive. We have marked that as excessive; we've challenged
22 it as excessive; and we have provided our time on that.

23 Separately, we provided our time on four other categories.
24 We provided our time where I went through and performed
25 searches of our bills and exported anything that had a

1 reference to experts: expert discovery, expert retention,
2 expert development, expert depositions.

3 We did another search for a second category under "summary
4 judgment" or "dispositive motion."

5 And we provided all of our billing for that, which
6 included research, preparation, hearings, and everything
7 elsewhere where the term "summary judgment" was in any way used
8 or referenced.

9 We then went through and did the same for discovery,
10 searching for "discovery," "interrogatories," "request,"
11 "production," I think "admission" as well, and provided those
12 materials in their entirety to counsel.

13 And many of those actually included time entries after
14 discovery had been closed and completed, but because they were
15 referenced in the time entries, we provided them to them.

16 We then did the same for depositions, for a search where
17 we searched for the word "deposition," which included
18 preparation for deposition, depositions, and even tasks that
19 just merely referenced a deposition.

20 And then, obviously, the pretrial and trial category from
21 December 1st, 2022, through March 1st verdict, Your Honor.

22 So we have provided more than what we've actually
23 contested in the fees motion as far as the actual hours that
24 are excessive. And we've tried to comply with not only the
25 letter but the spirit of the Court's order, which also

1 corresponds with the actual objections in the narrative that's
2 in the County's memorandum of points and authorities in
3 opposition.

4 **THE COURT:** All right. I'm looking at the legend to
5 defendants' objections.

6 Some of these, I'm going to require that they be -- you
7 turn over the hours.

8 (As read):

9 "A - Excessive/Inflated."

10 You've told me you've already done that.

11 (As read):

12 "B - Block Billing."

13 I agree with the Defense that block billing is not
14 excessive. It's a different problem. So the Defense -- that
15 objection by itself is okay.

16 (As read):

17 "C - Duplicative of Other Entries or
18 Work"

19 That should be turned over. To my mind, it's the same
20 thing as excessive.

21 (As read):

22 "D - Inconsistent With Other Entries."

23 If it really is inconsistent, I will say okay, you don't
24 have to turn that over.

25 \\

1 (As read):

2 "E - Administrative Work/Work Not Reasonably
3 Billable At Attorney Rates."

4 You should turn that over because it's all in the eye of
5 the beholder. Something that a secretary does for you,
6 depending on how experienced they are, may take hours and
7 hours, but a lawyer can do it in three minutes, and therefore,
8 it's more efficient for the lawyer to do it. So the
9 administrative work objection, that's going to be treated as
10 excessive, meaning the objection is excessive.

11 (As read):

12 "F - Unnecessary or Unreasonable in Light of
13 Task or Claimed Experience of Attorney."

14 Same thing. That should be turned over so that -- because
15 that's like excessive.

16 (As read):

17 "G - Unsupported By Documentation/Too Vague to
18 Determine Reasonableness"

19 Well, that one, okay. If that objection is made and the
20 objection is legitimate, you don't have to turn that over until
21 it's supported by documentation or cleared up.

22 (As read):

23 "H - Waived" --

24 I have no idea what you mean by "waived"; so I don't know
25 what that means.

1 (As read):

2 "I - Otherwise Non-Compliant With Court's
3 Order/Procedures."

4 Same thing. You don't have to turn that over yet. I'm
5 going to come back to it.

6 (As read):

7 "J - Not Demonstrably Necessary to Advance
8 Litigation or Further Litigation Projects Claimed."

9 Well, that is the same thing as excessive, and so you've
10 got to turn your hours over that are in the same task category.

11 Now, some of these I have said you don't have to turn
12 over, but I'm going to let the Special Master decide if the
13 Special Master thinks, in getting into the weeds here, that he
14 need to see them.

15 Now, I understand you don't have a Special Master yet; so
16 I'm going to just appoint one. He's my former law clerk, Matt
17 Borden. He's a very experienced lawyer now. He will only --
18 he will do it as a service to the Court for \$200 an hour, which
19 is a lot less than you all were charging. So I can't imagine
20 you can object on that ground. But you all are going to pay
21 for it because that's what Rule 53 and 54 require you to do.
22 You're going to pay for his time.

23 Okay. So he can overrule me on these other ones and
24 require more, but I myself am going to require some of these
25 things to be turned over.

1 All right. How else can I help this morning? What else
2 is still in dispute?

3 **MR. MAY:** Just so we don't have to come back here, can
4 we address the format in which these records will be turned
5 over? Because what the Defense has given us, if you look at
6 Exhibit E to my declaration, it was just a table that was
7 prepared. There's no -- it's not the actual billing record.

8 **THE COURT:** Yeah, you should get the billing records.

9 **MR. MAY:** The actual records.

10 **THE COURT:** You get the actual records.

11 **MR. MAY:** And the actual records we do have also don't
12 list the name of the timekeeper. I just realized --

13 **THE COURT:** They should have the timekeeper, the name
14 of the timekeeper, the hours spent, and the nature of the task.
15 That is not privileged. Do not even think that that's
16 privileged. It's not, unless there's somehow advice like
17 "Advice to client that we will lose this case." That would be
18 privileged. But no one ever says something like that. So
19 that's not privileged. It's never privileged. The idea that
20 time records are privileged is crazy, and we're not going to go
21 there.

22 So yes, you do have to produce those, those detailed
23 records, and back it up if you're challenging their side.

24 Now, if you just want to accept what they say as not
25 "excessive" -- and I'm putting "excessive" in quotes -- that's

1 fine. Sometimes that's the way it works out.

2 But if you are going to challenge it, then it's only fair
3 for everyone to ask, "Well, how much did you spend on that?" so
4 that an apples-for-apples comparison can be made.

5 Okay. What else can I do to help today?

6 **MR. MAY:** That's all for plaintiffs. Thank you.

7 **THE COURT:** Do you have a cross-motion, Mr. Gilbert?

8 **MR. GILBERT:** I absolutely have issues we need to
9 address in response to the Court's ruling.

10 First, Your Honor, Category E, on the admin, those are
11 items that are not billed. We did not bill any time --

12 **THE COURT:** They are billing. I'm billing them.
13 You're going to pay for them.

14 **MR. GILBERT:** My point --

15 **THE COURT:** You're going to pay for them.

16 **MR. GILBERT:** Your Honor --

17 **THE COURT:** You can take it up with the Ninth Circuit.

18 **MR. GILBERT:** Your Honor, my point is, you're ordering
19 me to produce records of our administrative process. There is
20 no billing from us on any of those items. We do not charge for
21 any of that.

22 **THE COURT:** Well, then put that under oath, that you
23 have no comparable billings. If that's under oath somewhere
24 and you can say categorically "We never billed a nickel for
25 this type of thing," then that's all you've got to say.

1 **MR. GILBERT:** Your Honor, I'm just making --

2 **THE COURT:** You don't have to -- but you're unwilling
3 to do it because I believe you're maybe not telling me the
4 truth.

5 **MR. GILBERT:** Your Honor, I'm happy to do that. When
6 we assemble the records, I will give them to you, and I will
7 give you that declaration.

8 But I want to be very clear that this case has been motion
9 after motion after motion because the Court said we should do
10 this. And we try and confirm that this is what exists. When
11 we produce these records, there will not be records for
12 e-filing, for example. There will be paralegal time for
13 checking cites. There will not be e-filing.

14 **THE COURT:** Well, the paralegal time has got to be
15 produced too.

16 **MR. GILBERT:** And that's fine.

17 But there will not be e-filing cites, or corresponding on
18 serving, or printing documents. So E will not -- just to be
19 very clear.

20 Same with J, Your Honor. The unnecessary to advance the
21 litigation, we don't have those costs. That's referring to,
22 for example, plaintiffs did a mock jury. We did not do a mock
23 jury. We do not have those fees. There's no entries that will
24 be produced or identified because they simply don't exist.

25 **THE COURT:** All you have to do then is say under oath

1 that for the mock jury, "We didn't do a mock jury so we don't
2 have any time for that." That's all you've got to do.

3 **MR. GILBERT:** Your Honor --

4 **THE COURT:** I don't understand why this is so
5 complicated.

6 **MR. GILBERT:** Because I'm explaining very clear on the
7 record what the records will contain. So if there's going to
8 be any disputes, we're going to take care of it today so we
9 don't come back on multiple more motions.

10 On the time sheets that have been produced, Your Honor,
11 this is directly from the timekeeping program. This has
12 everything. I can put in the billing code of who the person
13 is, and that's not privileged. It wasn't withdrawn from that.
14 It's just that's not the way they are.

15 What format would the Court like? Is it take our bills
16 and just produce them, or is it to segregate out?

17 **THE COURT:** Do you submit to the County bills that say
18 Attorney X, so many hours, and give the project?

19 **MR. GILBERT:** Your Honor, the bills we give to the
20 County are what we produced with two edits. It has the
21 captions on it, top and bottom, and it has a timekeeper number
22 on it. So it says --

23 **THE COURT:** Can I see what you actually send to the
24 County on a monthly basis?

25 **MR. GILBERT:** Yes.

1 **THE COURT:** Well, show it to me.

2 **MR. GILBERT:** Oh, I'm sorry. Do I have it here?

3 **THE COURT:** Yeah.

4 **MR. GILBERT:** No, Your Honor, I don't. I'm sorry. I
5 thought you asked --

6 **THE COURT:** I want you to produce it in the form you
7 give it to the County.

8 **MR. GILBERT:** If that's what the Court is ordering,
9 that's fine.

10 **THE COURT:** Yeah, that's I want. But I want it to be
11 organized by project.

12 **MR. GILBERT:** Okay, Your Honor.

13 **THE COURT:** So let's say that you -- there's a
14 deposition of Mrs. Loggervale and you're challenging what they
15 did to prepare for the deposition as excessive or duplicative.
16 Then you go through your time records and the time records of
17 your assistants and legal assistants and say "Loggervale
18 preparation" -- I don't know -- "55 hours."

19 And then -- but you give each entry, each entry so that
20 they can verify that the number you give, it adds up to 55.

21 **MR. GILBERT:** So, Your Honor, therein lies the dilemma
22 that I'm trying to get clarification on.

23 What we have provided is exactly what will be given. We
24 will add a column that has the attorney who did the work. But
25 this is literally the information.

1 What is missing? Because I'm hearing plaintiffs' counsel
2 saying we provided something different, which is absolutely
3 inaccurate. And --

4 **THE COURT:** Show me what you provided.

5 Mr. May, show me what he provided to you so I can see what
6 you two are debating about.

7 **MR. MAY:** Well, can I just clarify very quick?

8 In their opposition, they gave all their records related
9 to one project. So they knew how to do it for one project.
10 The summary judgment motions, they produced their records in
11 the format that they give it to the County.

12 And now the subsequent records for additional projects are
13 on just some table that doesn't have any of that
14 official-looking information on it.

15 And I can hand that to the Court as well. This is --

16 (Document handed up to the Court.)

17 **THE COURT:** Okay. Do you see this? Why can't you
18 produce this for every category?

19 **MR. GILBERT:** That's exactly what I did. It just
20 doesn't have the header on it.

21 **THE COURT:** Well, why don't you have -- what do you
22 mean, it doesn't have the header?

23 **MR. GILBERT:** It doesn't have the header that says
24 this is the category, I believe.

25 **THE COURT:** Well, it should say what the category is.

1 **MR. GILBERT:** Actually, it does have the header.

2 **THE COURT:** It should say what the category is so that
3 everyone will know that this is what you charge for the -- and
4 give all these detailed entries for summary judgment --

5 **MR. GILBERT:** Your Honor --

6 **THE COURT:** -- for preliminary injunction, for
7 preparing for Loggervale deposition.

8 **MR. GILBERT:** The document itself is titled and says
9 "Summary Judgment." And that's what -- so what is printed, the
10 document is actually titled what it is when we sent it to them.

11 **THE COURT:** I don't see any title on here.

12 **MR. GILBERT:** When you look at the actual document
13 itself -- because we sent them in electronic form because there
14 is -- we don't use paper anymore. So we took electronic
15 format. We sent them electronic format that actually says the
16 subject of the material in the title of the document when you
17 click to open it. So when you open the e-mail, you'll have
18 four attachments. I don't know -- I can't recall the exact
19 names; but one, I believe, said "Discovery Related Bills" or
20 "Discovery." One said "Expert."

21 And then in the e-mail that was sent, I described exactly
22 what they were and the categories, exactly what was being
23 provided in that e-mail.

24 **THE COURT:** Why can't you do it the way I ask you to
25 do it, which is you have these detailed time entries and you

1 sort them out into whatever the task categories are that you're
2 challenging -- summary judgment, deposition of Loggervale --
3 each one of those, instead of having them all mashed together
4 in one big, long, running thing? Why can't you do it that way?

5 **MR. GILBERT:** Do we need to -- fine. Do we need to
6 match all of the categories in plaintiffs', or can we be more
7 general?

8 **THE COURT:** You need to match the ones you're
9 challenging. So if you're challenging, as duplicative or
10 excessive, the amount of time they spent on the Loggervale
11 deposition, then you need to give us your time spent on the
12 Loggervale deposition, as well as your associates' and legal
13 assistants' so that we can do an apples-for-apples.

14 **MR. GILBERT:** Your Honor, the problem is that there
15 are categories that are not clear what is encompassed within
16 them within plaintiffs' definitions. It's hard to track and do
17 a direct apples-to-apples comparison.

18 **THE COURT:** If it's too difficult and it's not an
19 apples-for-apples, then do the best you can, and explain why
20 you can't do better. And I'll be reasonable about it. But
21 you've got to make an honest effort in that direction so we can
22 do the apples-for-apples.

23 It could be absolutely right that a given project that
24 they have doesn't track into your records to show that you had
25 the same project. Maybe just you organized your things in a

1 different way and it's just not possible. I will respect that.
2 But you've got to try a little harder to get it in a format
3 where we can do the deposition by deposition, motion by motion.

4 Usually, it can be done. In the 23 years I've done this
5 job, this thing has worked -- this is the first time I've ever
6 had this problem. The lawyers have always been able to do it.

7 So please try harder.

8 All right. Do you have any more questions, Mr. Gilbert?

9 **MR. GILBERT:** No, Your Honor.

10 **THE COURT:** Thank you.

11 I want you to -- I want you to go back to Judge
12 Laurel Beeler. When's the last time you tried to settle this
13 case with Laurel Beeler?

14 **MR. MAY:** I can't remember. It's been a long time.

15 **THE COURT:** Is that true?

16 **MR. GILBERT:** I believe it's probably been almost a
17 year and a half, if not two.

18 **THE COURT:** Well, now that we have a verdict and a lot
19 of water under the bridge, one of you two, or maybe both of
20 you, are going to be disappointed by the Rule 50 and 59, and
21 then there's the appeal.

22 So I suspect that this is an ideal time for both sides to
23 try to settle the case. So I think you should go back. I'm
24 going to order you to go back and see her.

25 **MR. MAY:** We have a call with the mediator at the

1 Ninth Circuit this Friday. We're already in the Ninth Circuit.
2 So they're going to put us through their program. If we don't
3 resolve it that way, maybe we can ask the Court to refer us to
4 a magistrate, but I'm happy to explore with the Ninth Circuit.

5 **THE COURT:** Well, when are you going to meet with -- I
6 would prefer before I have to rule on these voluminous motions.

7 **MR. MAY:** We'll find out Friday what the schedule is.

8 **THE COURT:** Would you let me know so that I can -- I'd
9 like to know what that schedule is.

10 I've already started the process with Judge Beeler, but I
11 didn't realize you were already in touch with the panel at the
12 Court of Appeals.

13 **MR. MAY:** Yeah. We can do a joint letter,
14 Mr. Gilbert, Friday, after we speak with the mediator, if
15 that's okay.

16 **THE COURT:** All right. Would you, please? All right.

17 Now, Matt Borden, does anybody have an objection to him?
18 He has no connection to this case. He does general litigation,
19 but mostly patent and business cases. So he's not a civil
20 rights lawyer, but he can do this case.

21 **MR. MAY:** B-o-r-d-e-n?

22 **THE COURT:** B-o-r-d-e-n, yes.

23 **MR. MAY:** Okay. Yeah, no objection.

24 **THE COURT:** Do you have any objection?

25 **MR. GILBERT:** I don't believe so, but I would like to

1 run it by the County. If you give me until --

2 **THE COURT:** Run it by --

3 **MR. GILBERT:** -- 4 o'clock --

4 **THE COURT:** Let me know by noon tomorrow if you have
5 an objection, in writing. Matt Borden.

6 Okay. Are we done for today?

7 **MR. MAY:** Thank you, Your Honor.

8 **THE COURT:** I'm not going to do a written order. You
9 just have to -- you all can do this for me. Thank you.

10 **MR. MAY:** Thank you, Your Honor.

11 **MR. GILBERT:** Thank you, Your Honor.

12 **THE CLERK:** Court adjourned.

13 (Proceedings adjourned at 11:23 a.m.)

14
15 **CERTIFICATE OF REPORTER**

16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.

18
19 DATE: Tuesday, May 2, 2023

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24 _____
25 Ana Dub, RMR, RDR, CRR, CCRR, CRG, CCG
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